

(Name) WILLIAM TERRY

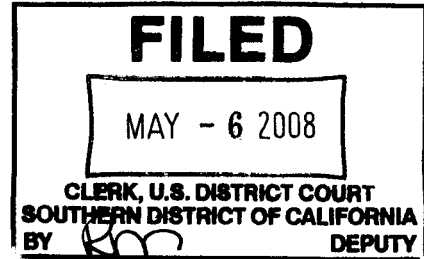
(Address) CALIF. INST. FOR MEN / MSF
P.O. BOX 600

(City, State, Zip)

CHINO, CALIF. 91708

(CDC Inmate No.)

K-89959



United States District Court
Southern District of California

(Enter full name of plaintiff in this action.)

WILLIAM, TERRY, K-89959

Plaintiff,

v.

LT. McBRIDE/NOW CAPT.
SGT. HERNANDEZ/NOW LT.
C/O FLORES/NOW PAROLE OFFICER
C/O WILLIAMS
DR. CHOO, CHIEF PHYSICIAN
DR. J. RITTER, CMO
DR. J. HUNT

(Enter full name of each defendant in this action.)

Defendant(s).

Civil Case No. 07cv2360J (POR)

(To be supplied by Court Clerk)

FIRST AMENDED
Complaint Under the
Civil Rights Act
42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, WILLIAM TERRY
(print Plaintiff's name)
, who presently resides at CHINO STATE PRISON/MSF
(mailing address or place of confinement)
, were violated by the actions

of the below named individuals. The actions were directed against Plaintiff at RICHARD J. DONOVAN,
STATE PRISON IN SAN DIEGO, CA.

on (dates) 12/13/03 , 01/18/04 , and

(institution/place where violation occurred)

(Count 1)

(Count 2)

(Count 3)

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

CR

Defendant LT. McBRIDE/NOW CAPT. resides in SAN DIEGO, CA.
(name) (County of residence)
 and is employed as a CORRECTIONAL CAPTAIN . This defendant is sued in
(defendant's position/title (if any))

his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: On 12/13/03, I was housed on an upper bunk at Donovan state prison, inappropriately. I informed Then Lt. McBRIDE, who was the housing Unit Supervisor that I am medically documented as a seizure risk, and cannot be housed on an upper bunk. He asked if I had a Medical chrono in my position. I informed him that He could check my Medical file, which he refused to do.

Defendant SGT. HERNANDEZ/NOW LT. resides in San Diego, Ca.
(name) (County of residence)
 and is employed as a Correctional Lieutenant . This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting

under color of law: On 12/13/03, I was inappropriately housed on an upper bunk. I informed then, Sergeant Hernandez, that I am Medically documented as a seizure risk. due to being in Ad/seg I didn't have my Medical Chrono with me, but informed him he could check my medical file, which he refused to do. He acted completely indifferent to my medical concerns.

Defendant C/O Flores/Now Parole Officer resides in San Diego, Ca.
(name) (County of residence)
 and is employed as a Correctional Officer . This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting

under color of law: On 12/13/03, I was inappropriately housed on an upper bunk with complete disregard to my Medical condition. I am medically documented as a seizure risk, and C/O Flores was made aware of this by Medical Technical Assistants (MTA) Wilson and Singletary. C/O Flores disregarded that information, which resulted in me sustaining serious injuries which had a lengthy and very painful Partial healing process.

Defendant C/O WILLIAMS resides in SAN DIEGO, CA.
(name) (County of residence)
 and is employed as a CORRECTIONAL OFFICER . This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting

under color of law: On 12/13/04, I was inappropriately housed on an upper bunk with complete disregard to my medical condition as a seizure risk, which was medically documented. Due to me being in Administrative Segregation, I didn't have My Medical Chrono in my possession, but I informed C/O WILLIAMS that he could check my Medical file., which he refused to do. However, Medical Technical Assistants (MTA) Wilson and Singletary Verified my Medical Condition on a Subsequent trip to the Ad/Seg Unit, wich was completely ignored by C/O WILLIAMS. C/O WILLIAMS acted in a manner which caused me to sustain very serious and painful injuries that took months to partially heal.

(DEFENDANTS CONTINUED)

DEFENDANT: Dr. Choo resides in SAN DIEGO, CA.
 and is employed as a Medical Doctor This defendant is sued in
 his/her [X] individual [X] official capacity. explain how this defendant was acting
 under color of law: When I had the seizure and fell off of my bunk, I was initially seen by Dr. Choo. After I was examined by Dr. Choo his/her treatment was that my ribs would heal on their own. I was given some pain pills and sent on my way. My ribs were not even wrapped. Dr. Choo just said that they would heal on their own. I pleaded with Dr. Choo for more adequate treatment because I was in severe pain, but it was to no avail. Dr. Choo acted in a very unprofessional and irresponsible manner, which caused me to endure extreme pain for an extended length of time. Dr. Choo was completely indifferent to the Medical attention that I required.

DEFENDANT: Dr. J. Ritter resides in SANDIEGO, CA.
 and is employed as a Chief Medical Officer This defendant is sued in
 his/her [X] individual [X] official capacity. explain how this defendant was acting
 under cover of law: I was seen by Dr. J. Ritter on a follow up visit approximately a month and a half latter to monitor the healing process of my ribs. X-rays were taken as I was still in severe pain. Dr. Ritter denied my request to see a specialist which compounded and exacerbated my painful situation. Dr. Ritter acted irresponsibly and unprofessionally, by denying me adequate treatment. He was completely indifferent to the pain I had been suffering through.

DEFENDANT Dr. J. Hunt resides in SAN DIEGO, CA.
 and is employed as a Medical Doctor This defendant is sued in
 his/her [X] individual [X] official capacity explain how this defendant was acting
 under cover of law: I was seen by Dr. Hunt on a follow up visit to monitor the the healing process of my ribs. Dr. Hunt told me that my ribs were healing properly. I informed Dr. Hunt that I was still experiencing severe pain, and I requested that he refer me to a specialist. Dr. Hunt denied my request. Dr. Hunt's actions were irresponsible and unprofessional. He acted completely indifferent to the medical attention that I required, which caused me to endure more months of extreme pain that could have been avoided.

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: (FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT)
(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

On 12/13/03, I was Placed in Administrative Unit, on a top bunk. I have a Medical Condition which causes me to have seizures, which was Documented in my Medical file. I also had a Medical Chrono which stated that I can only be housed on a lower tier/lower bunk due to seizures.

However, due to me being in Administrative Segregation Unit, I was not able to personally produce that documentation as it was in my personal property. Initially informed C/O's FLORES and WILLIAMS of my medical condition. Their response was that if I couldn't produce the Documentation, they would not do anything about it. I informed them that they could check my medical file, which they refused to do. I was then inappropriately housed on an upper bunk. On a subsequent routine Medical trip to the Ad/Seg Unit, Medical Technical Assistants (MTA) Wilson and Singletary verified my Medical condition to C/O's Flores and Williams, which they completely ignored and kept me on the top bunk.

I later appealed to Sergeant Hernandez, who was their direct supervisor. I explained the situation to him as described above, with negative results. His response was that he would not attempt to verify my medical condition. He also stated that if I couldn't personally produce the Medical Documentation, then there was nothing He could do.

On a later date I appealed to the Lieutenant of Ad/Seg Unit; Lieutenant McBride, who was Sergeant Hernandez' direct supervisor. I also explained the same situation to him as described above. Again with negative results. He also stated that he would not attempt to check my medical file or contact the Medical Department to verify my Medical condition., and that if I didn't have the Documentation myself, then it was not his responsibility. I remained on the top bunk until the inevitable happened.

On 01/18/04, approximately one month later, I suffered a seizure and fell from the top bunk. I was transported to Medical and examined. It ultimately discovered that I had three broken ribs, which caused months of pain, due to extenuating circumstances concerning conflicting medical diagnosis.

This could have been avoided if CDC staff would have not acted so unprofessionally. Willfully and completely disregarding my Health and safety, And Purposefully ignoring the MTA staffs acknowledgment of my Medical condition. And not following through with the correct procedure when it comes to Medical concerns.

Count 2: The following civil right has been violated:

(RIGHT TO MEDICAL CARE)

(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 2.]

On 01/18/04, I suffered a seizure and fell from the top bunk that I was inappropriately housed in. I was transported to the Medical Department, and was initially examined by Dr. Choo. All Dr. Choo did was prescribe me some pain medication and sent me on my way. My ribs were not even wrapped. Dr. Choo said that they would heal on their own. I told Dr. Choo that I was in severe pain, but all she said was that she would monitor the progress. She ignored my plea for more adequate treatment.

On 02/19/04, I was seen by Dr. J. Ritter on a follow up visit to monitor the progress of my ribs, and X-Rays were taken. At that time I informed Dr. Ritter that I was still in constant severe pain. I requested that Dr. Ritter refer me to see a specialist, because he refused to administer any further treatment, but he denied my request. I had to continue to endure the pain.

On 03/19/04, I was seen by Dr. J. Hunt, on a follow up visit to monitor the healing progress of my ribs. Again X-Rays were taken. I informed Dr. Hunt that I was still in constant severe pain, but he assured me that my ribs were healing properly. I again requested that I be referred to a specialist, but Dr. Hunt denied my request, and I was forced to continue in extreme pain for months.

Finally, On 02/23/05, after almost a full year of enduring constant severe pain, I was referred to a Thoracic Surgeon by Dr. Giannini, (Medical Doctor at Richard J. Donovan). On 04/27/05, I was examined by Dr. Howden, Thoracic Specialist). The results of his examination are as follows:

- 1) a posterolateral fracture of the ninth rib, with incomplete union.
- 2) There is a non-union of the tenth rib, with bony sclerotic margin and posterior protuberance.
- 3) there is a displaced fracture of the eleventh rib posterolaterally with non-union. the fracture fragment is displaced.

I suffered extreme pain for longer then a year because of the deliberate indifference of the Medical Doctors listed as defendants in this civil matter. Due to their irresponsible and unprofessional attitude, and complete disregard of my medical needs, I was intentionally denied my right to adequate medical care.

Count 3: The following civil right has been violated:

(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 3.]

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? ☐ Yes ☒ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

(b) Name of the court and docket number: _____

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] _____

(d) Issues raised:

(e) Approximate date case was filed: _____

(f) Approximate date of disposition: _____

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☐ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s):

2. Damages in the sum of \$ 250,000
3. Punitive damages in the sum of \$ 250,000
4. Other: ALL FUTURE MEDICAL COST STEMMING FROM THESE INJURIES.

F. Demand for Jury Trial

Plaintiff demands a trial by ☐ Jury ☒ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

☒ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

I declare under the penalty of perjury that the foregoing is true and correct.

4-26-08
Date

William Terb
Signature of Plaintiff